



CALIFORNIA FARM BUREAU FEDERATION

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Sent via E-Mail

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December 2, 2013

Dr. Jelena Hartman
Central Valley Regional Water Quality Control Board
11020 Sun Center Drive, #200
Rancho Cordova, CA 95670-6114

***Re: Comments on the Western San Joaquin River Watershed Tentative WDRs/MRP
for Discharges from Irrigated Lands***

Dear Dr. Hartman:

The California Farm Bureau Federation ("Farm Bureau") is a non-governmental, non-profit, voluntary membership California corporation whose purpose is to protect and promote agricultural interests throughout the state of California and to find solutions to the problems of the farm, the farm home, and the rural community. Farm Bureau is California's largest farm organization, comprised of 53 county Farm Bureaus currently representing nearly 78,000 agricultural, associate, and collegiate members in 56 counties. Farm Bureau strives to protect and improve the ability of farmers and ranchers engaged in production agriculture to provide a reliable supply of food and fiber through responsible stewardship of California's resources.

Farm Bureau appreciates the opportunity to provide comments on the tentative draft of the Western San Joaquin River Watershed Waste Discharge Requirements ("Tentative WDR") and Monitoring and Reporting Program ("MRP") for Discharges from Irrigated Lands and respectfully presents the following remarks. Many of the comments raised in Farm Bureau's earlier letter are still pertinent and are incorporated herein.

Upon reviewing the Western San Joaquin River Watershed Draft WDR as well as the previously adopted Eastern San Joaquin River Watershed WDR and Tulare Lake Basin Tentative WDR, Farm Bureau is concerned that the general orders are not being individually developed and tailored, but rather are duplications of previously prepared orders with *minor* revisions. Each coalition represents unique geographic characteristics, including, but not limited, to rainfall, hydrology, drainage, commodities grown, and

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topography. Given all of these vast differences, each general order should be individually drafted specific to the region it regulates.

General Order Page 3, Finding 1—Definition of “Waste”

The Tentative WDR seeks to regulate discharges of “waste” from irrigated lands. As referenced in the footnote to Finding 1, Attachment E defines the term “waste” to not only include the statutory definition found in Water Code section 13050(d), but also adds additional language to include the regulation of “earthen materials, inorganic materials, organic materials such as pesticides and biological materials” as wastes which “may directly impact beneficial uses or may impact water temperature, pH and dissolved oxygen.” (Tentative WDR, Attachment E, p. 6.) No rationale is provided for the overly broad expansion of a statutorily defined term; as such, the term “waste” should be limited to its definition found in Water Code section 13050(d).

General Order Page 4, Finding 5—Regulation of Water Quality

The Tentative WDR amends the scope of regulatory coverage by including a broad and generic statement that does not include specific provisions limiting the regulation of water traveling through particular structures as included in past conditional waivers. (Tentative WDR, p. 4.) The current scope of coverage causes concern regarding the regulation of on-farm conveyances and between-farm conveyances, causing potential ambiguity regarding the point of demarcation for regulation. In order to provide clarity, Finding 5 should be revised.¹

General Order Pages 12-13, Findings 33-37—Compliance with the California Environmental Quality Act

The Tentative WDR relies upon the environmental analysis conducted in the Program Environmental Impact Report (“PEIR”) and concludes that “[a]lthough the Order is not identical to any of the PEIR alternatives, the Order is comprised entirely of elements of the PEIR’s wide range of alternatives.” (Tentative WDR, p. 12, ¶¶ 34-35.) Relying on such analysis, the Tentative WDR further concludes “the PEIR identified, disclosed, and analyzed the potential environmental impacts of the Order” and the “potential compliance activities undertaken by the regulated Dischargers...fall within the range of compliance activities identified and analyzed in the PEIR.” (*Id.* at ¶ 34.) The Tentative WDR is not sufficiently within the range of alternatives analyzed within the PEIR, but rather goes beyond those alternatives as it includes provisions substantially different from elements in those alternatives, especially alternatives 3 through 5. These new components, such as provisions creating end-of-field discharge limitations, the farm management performance standards, and the associated costs, do not represent merely a “variation” on the alternatives in the PEIR but rather are elements that were not

¹ Finding 5 could be potentially revised to state: “This Order is not intended to regulate water in agricultural fields, including, but not limited to, furrows, beds, checks, and ancillary structures, contained on private lands associated with agricultural operations. This Order is not intended to address the lawful application of soil amendments, fertilizers, or pesticides to land.”

thoroughly considered previously and are likely to result in the imposition of new burdens on irrigated agricultural operations that would have a significant and cumulatively considerable impact on the environment. Thus, reliance on the PEIR for CEQA compliance is inappropriate.²

General Order Pages 13-14, Findings 40-41—California Water Code Sections 13141 and 13241

Pursuant to the Water Code, the Regional Board is obligated to consider costs associated with the entire Long-Term Irrigated Lands Regulatory Program, as well as each individual general order, such as the Western San Joaquin River Watershed WDR. (Wat. Code, § 13141.) Finding 40 incorrectly concludes that any new cost analysis is unnecessary given that “the Basin Plan includes an estimate of potential costs and sources of financing for the *long-term irrigated lands program*.” (Tentative WDR, p. 14, ¶ 40, emphasis added.) Although the Basin Plan was amended to include costs associated with the *long-term irrigated lands program*, the Basin Plan Amendment did not include specific costs associated with the Western San Joaquin River Watershed WDR as it was not in existence at the time nor were the specific program requirements analyzed (such as the templates and individual reporting summarized by the third-party). Given that this Tentative WDR proposes new costly regulatory components not previously analyzed during the environmental review stage or when adopted in the Basin Plan, the Regional Board must analyze, evaluate, and estimate all of the costs of these new regulatory requirements.

General Order Pages 16-17—Coordination and Cooperation with Other Agencies

Farm Bureau appreciates the provisions within the Tentative WDR that describe the Regional Board’s coordination and cooperation with other agencies as well as how the implementation of the WDR will utilize such coordination and cooperation. Growers within the Western San Joaquin River Watershed have a long-standing relationship with many agencies, including the United States Department of Agriculture’s Natural Resources Conservation Service (“NRCS”). To highlight this relationship, a provision should be added, such as Provision 52 in the San Joaquin County and Delta Draft WDR.

Additionally, Farm Bureau appreciates the revisions acknowledging the assessment of nitrogen management and control currently underway by the California Department of Food and Agriculture’s Task Force as well as the soon to be convened State Water Resources Control Board’s Expert Panel. (Tentative WDR, p. 17, ¶ 50.) Given the assessments and recommendations to be made by both processes to determine appropriate nitrogen tracking and reporting systems and management practices, amending

² Farm Bureau also questions the Regional Board’s authority to require mitigation measures within the Tentative WDR for farm level activities. Implementation of management practices at the farm level, which is the heart of the WDR, is not subject to a discretionary approval by the Regional Board. (See Pub. Resources Code, § 21080, CEQA generally applies only to discretionary projects.) Mitigation measures that cannot be legally imposed need not be proposed or analyzed. (CEQA Guidelines, § 15126.4(a)(5).)

the nitrogen management plan deadlines to allow for the incorporation of future recommendations is both appropriate and appreciated.

General Order Page 21, Provisions III. A. and III. B.—Discharge Limitations

The use of “shall not cause *or contribute*” to an exceedance of applicable water quality objectives is overly expansive and creates an unreasonable standard that is undefined, ambiguous, and holds farmers and ranchers liable for even the smallest de minimus contribution. Accordingly, a qualifier should be added before “contribute” or the discharge limitations for both surface water and groundwater should be rewritten to state “wastes discharged from Member operations shall not cause an exceedance of applicable water quality objectives in surface water [or the underlying groundwater], unreasonably affect applicable beneficial uses, or cause a condition of pollution or nuisance.”

General Order Page 23, Provision IV. B. 8—Nitrogen Management Plans

Provision 8 requires all members to prepare and implement an annual nitrogen management plan. Such plans should analyze “nitrogen” application rather than “nutrient” application. (Tentative WDR, p. 23, ¶ 8; see also Attachment A, Information Sheet, p. 23 stating “the Order requires that Members implement practices that minimize excess **nitrogen** application relative to crop need” (emphasis added).) As seen in previous drafts, only members in high vulnerable areas where nitrate is a constituent of concern were required to prepare annual nitrogen budgets and management plans. Rather than requiring all members to prepare nitrogen budgets and plans, as Provision 8 is currently written, the Tentative WDR should be revised to allow flexibility in the requirements for those areas that have no or a lower propensity to impact water quality.

**General Order Pages 28-31, Provisions B, C, and D; Pages 33-34, Templates—
Template Requirements for Farm Evaluations, Nitrogen Management Plans,
Nitrogen Management Plan Summary Reports, and Sediment and Erosion Control
Plans**

Farm Bureau appreciates the inclusion of language to allow third-parties the ability to modify the templates due to coalition-specific issues, including geographic area, the commodities grown, known water quality impairments, the propensity to impact water quality, and the size and scale of farming operations. Such tailoring will allow the Regional Board to obtain the most relevant information specific to the area being regulated while also allowing growers to minimize costs. However, in order for the coalition to take advantage of such an option, the words “or equivalent” need to be added to the Farm Evaluation section and the Nitrogen Management section (the terms already exist in the Sediment and Erosion Control Plan section on page 29):

Proposed revision underlined: **Section VII. B. Farm Evaluation
(Tentative WDR, p. 28, ¶ B.)**—“The Member must use the Farm
Evaluation Template approved by the Executive Officer (see section
VIII.C below), or equivalent.”

Proposed revision underlined: **Section VII. D. Nitrogen Management Plan (Tentative WDR, p. 30, ¶ D.)** —“The Member must use the Nitrogen Management Plan Template approved by the Executive Officer (see section VIII.C below), or equivalent.”

General Order Page 39, Provision L.; Attachment B, MRP, Page 27, Provision V. D.—Basin Plan Amendment Workplan

Farm Bureau appreciates the inclusion of a process for the third-party to pursue a basin plan amendment to address the appropriateness of a beneficial use designation.

Attachment B, MRP, Pages 10-11, Provision III. B. 4—Toxicity Testing

As currently drafted, the Tentative MRP’s language could be interpreted that both acute and chronic toxicity testing is required for all toxicity tests. (See Tentative Attachment B, MRP, pp. 10-11, footnotes 5 and 6 stating that chronic and acute toxicity testing should be completed in accordance with U.S. EPA testing methods.) Since the inception of the Irrigated Lands Regulatory Program, surface water monitoring has occurred and has utilized acute aquatic toxicity testing, with no evidence of any shortcomings. If there is no U.S. EPA acute toxicity testing method for *Selenastrum capricornutum*, Farm Bureau recommends adding language to footnote 6 to specify that the use of chronic testing is appropriate *only* in this circumstance.

Attachment B, MRP, Page 25-26, Reporting Components 19 and 20³

Reporting Components 19 and 20 outline the process in which a third-party will collect data from members and report the data to the Regional Board at the township level. As currently drafted, Farm Bureau supports the generalized concept of reporting at the township level. Reporting at the township level allows coalition groups to properly compare crop data, evaluate management practice trends, and manage the data in an efficient and effective manner. The comparison of data at the field level, with or without the identification of a member’s parcel, is not supported and would not result in an efficient use of resources or the ability to assess and evaluate trends.

Reporting Component 20, Summary of Management Practice Information, further requires a third-party to provide the individual data records to the Regional Board in addition to aggregating and summarizing information collected in the Farm Evaluations. (Tentative Attachment B, MRP, p. 26.) No explanation is provided in the MRP or WDR to support the necessity of needing the individual data records. Rather, the summary of management practices provided by the third-party will be more meaningful than the individual data records and will include the appropriate analysis needed by the Regional Board. Thus, Farm Bureau questions the need for third-parties to submit individual data

³ See also Attachment A, Information Sheet, Pages 28-29—Spatial Resolution of Nitrogen Management Plan and Farm Evaluation Information.

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records and suggests this addition to the management practices information reporting component be removed.

Thank you for the opportunity to provide our comments and concerns. We look forward to further involvement and discussion with the Regional Board on the Western San Joaquin River Watershed WDR and MRP for Discharges from Irrigated Lands.

Very truly yours,

A handwritten signature in black ink, appearing to read "Kari E. Fisher".

Kari E. Fisher

Associate Counsel

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